

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

EASY PROPERTIES, LLC,
a domestic limited liability company,)
Plaintiff,)
v.)
(1) USAA GENERAL INDEMNITY) Case No. 17-CV-314-KEW
COMPANY, a foreign insurance)
corporation,) *(Removed from District Court
of Pittsburg County
Case No. CJ-2017-160)*
Defendant.)

NOTICE OF REMOVAL

Defendant USAA General Indemnity Company (“USAA GIC”), pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, removes the above-captioned action pending in the District Court of Pittsburg County, Oklahoma, to the United States District Court for the Eastern District of Oklahoma. The grounds for removal are as follows:

1. Plaintiff commenced this action styled *Easy Properties, a domestic limited liability company v. USAA General Indemnity Company*, Case No. CJ-2017-160 (the “Action”), by filing a Petition with the District Court of Pittsburg County, Oklahoma (the “Petition”), on July 20, 2017.

2. The Petition asserts claims against USAA GIC for alleged breach of contract and breach of duty to act fairly and in good faith. Plaintiff seeks damages in an amount in excess of \$75,000, exclusive of attorneys' fees, costs, and interest. *See* Petition at ¶ 14 (Ex. 1).

3. The Petition and Summons in the Action are attached as Exhibit 1. A copy of the Docket Sheet is attached as Exhibit 2. USAA GIC is unaware of the existence of any process, pleadings, or orders other than the documents included in Exhibit 1. Moreover, there are no

motions pending before the Pittsburg County District Court in this matter, nor are any hearings currently set.

4. As set forth more fully below, this case is properly removed to this Court under 28 U.S.C. §§ 1332, 1441, and 1446 because USAA GIC has satisfied the procedural requirements for removal and this Court has subject matter jurisdiction under 28 U.S.C. § 1332.

I. USAA GIC has satisfied the procedural requirements for removal.

5. USAA GIC was served with the Complaint on July 27, 2017. Therefore, this removal is timely filed under 28 U.S.C. § 1446(b).

6. Under 28 U.S.C. § 1446(a), the United States District Court for the Eastern District of Oklahoma is the appropriate court for filing this Notice of Removal from the District Court of Pittsburg County, Oklahoma, where the Action was pending. *See* 28 U.S.C. § 116(b).

7. Venue is proper pursuant to 28 U.S.C. §§ 1441(a) and 1391(b).

II. Removal is proper because this Court has subject matter jurisdiction under 28 U.S.C. § 1332.

8. This Court has original jurisdiction over this action under the diversity of citizenship provision contained in 28 U.S.C. § 1332(a) because this is a civil action (A) where the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and (B) that is between citizens of different states. Thus, the Action may be removed to this Court by USAA GIC pursuant to 28 U.S.C. § 1441(a).

A. The amount in controversy requirement is satisfied.

9. It is apparent from the face of the Petition that Plaintiff seeks recovery of an amount in excess of \$75,000, exclusive of interest and costs. *See* Ex. 1, Petition at ¶ 14 and “Wherefore” clause (Plaintiff “prays for judgment ... in an amount ... which is in excess of \$75,000, the amount required for Federal Court jurisdiction.”).

10. The assertions regarding damages in the Petition are sufficient to demonstrate that the amount in controversy requirement for diversity jurisdiction has been met. 28 U.S.C. § 1446(c)(2).

B. Complete diversity of citizenship exists between Plaintiff and USAA GIC.

11. USAA GIC is a corporation incorporated in Texas with its principal place of business in Texas. For purposes of determining diversity jurisdiction, USAA GIC is a citizen of Texas.

12. Plaintiff alleges it is a limited liability company with its principal place of business is located in McAlester, Pittsburg County, Oklahoma. *See* Ex. 1, Petition, ¶ 2. Plaintiff was organized under the laws of the State of Oklahoma. Upon information and belief, the members of Easy Properties LLC are Marvin Briggs and Michiko Briggs, who are residents of the State of Oklahoma who intend to remain in Oklahoma. Residence, while not equivalent to citizenship, is *prima facie* evidence of domicile. *See State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994). Domicile is equivalent to citizenship for purposes of diversity jurisdiction. *See Smith v. Cummings*, 445 F.3d 1254, 1259-60 (10th Cir. 2006). Based on the foregoing and upon information and belief, Plaintiff is a citizen of the State of Oklahoma for purposes of diversity jurisdiction.

13. USAA GIC reserves the right to amend or supplement this Notice of Removal.

14. USAA GIC reserves all defenses, including, without limitation, those set forth in FED. R. CIV. P. 12(b).

15. Written notice of the filing of this Notice of Removal will be given to Plaintiff and the state court promptly after the filing of the Notice of Removal pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, USAA GIC removes this Action to this Court under 28 U.S.C. §§ 1332, 1441, and 1446, and invokes this Court's jurisdiction.

Respectfully submitted this 16th day of August, 2017.

/s/Jessica L. Dickerson
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ATTORNEYS FOR DEFENDANT USAA
GENERAL INDEMNITY COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of August, 2017, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following registrants:

Michael D. Parks
ATTORNEY FOR PLAINTIFF

Additionally, I hereby certify that a true and correct copy of the above and foregoing was sent by U.S. Postal Service this 16th day of August, 2017, to:

Michael D. Parks
10 E Washington Suite 102
PO Box 3220
McAlester, OK 74502

ATTORNEY FOR PLAINTIFF

/s/ Jessica L. Dickerson